IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 6.3.2007

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THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

Writ Appeal No.1825 of 2000

1.The State of Tamil Nadu,
represented by the
Deputy Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Madras-9.

2.The Special Tahsildar,
Land Acquisition,
Housing Scheme No.I,
Coimbatore-18. ... Appellants/respondents

-Vs.-

1.A.Kandasamy,
2.A.Sivasamy,
3.Duraiswamy,
4.Palaniswamy,
5.Sayammal,
6.Gandhimani,
7.Janaki,
8.G.S.Balakrishnan,
9.K.Ramaswamy,
10.R.Karuppuswamy,
11.Kannammal,
12.Kanageswari,
13.Rajagopal,
14.S.Rangaswamy. ... Respondents/Petitioners

Writ Appeal is filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.9747 of 1989 dated 4.8.1998.

WP No.9747/89: Petition presented under Article 226 of the constitution of India to issue a writ of Certiorari calling for the records relating to the Declaration under section 6 of the Land Acquisition Act made by G.O.Ms.No.419 Housing and Urban Development

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dated 19.3.1986 and published in Tamil Nadu Government Gazette (Extraordinary) Part-II Section 2 dated 20.3.1986 and quash the same in so far as the lands of the petitioners are concerned in S.F.No.3-1C Krishnarayapuram Village, Coimbatore Taluk, Coimbatore District.

For appellants : Mr.G.Sankaran
Additional Government Pleader
for first appellant.

: Mr.K.Chelladurai,
for second appellant.

For respondents : Mr.V.Nicholas

JUDGMENT

R.SUDHAKAR,J.

The State of Tamil Nadu represented by Deputy Secretary to Government, Housing and Urban Development Department, Fort St. George, Chennai and the Special Tahsildar, Land Acquisition, Housing Scheme No.I, Coimbatore, are the appellants. This Writ Appeal is filed challenging the order dated 4.8.1998 passed by a learned single Judge of this Court in W.P.No.9747 of 1989.

2. Writ Petition No.9747 of 1989 was filed challenging the Declaration under Section 6 of the Land Acquisition Act in G.O.Ms.No.419, Housing and Urban Development Department dated 19.3.1986 and published in Tamil Nadu Government Gazette (Extraordinary) Part-II, Section 2 dated 20.3.1986 and to quash the same in so far as the lands of the petitioners, the present respondents, in S.F.No.3-1C, Krishnarayapuram village, Coimbatore Taluk, Coimbatore District. The averments in the affidavit filed in support of the writ petition in brief is that all the writ petitioners, the present respondents, have purchased the land from A.R.Narayanaswamy Naidu, son of A.T.Rangaswamy Naidu in the month of April, 1981, June, 1981, May 1982 and one person in March, 1983. The Notification under Section 4(1) of the Act was issued in G.O.Ms.No.551 Housing and Urban Development Department dated 7.3.1983 and the same was published in Government Gazette on 23.3.1983 in the name of A.T.Rangasamy Naidu, A.Savithiri and Magudapatti. The local publication was made on 17.5.1983 and the Form 3 notice was issued on 29.4.1983. Section 5-A Notice dated 29.4.1983 was served and after enquiry an order was passed on 30.5.1983. Thereafter, Declaration under Section 6 was passed on 19.3.1986 in G.O.Ms.No.419 Housing and Urban Development Department, which is challenged in the writ petition. Publication in Government Gazette in respect of Section 6 Declaration was made on 20.3.1986 in the name of A.T.Rangaswamy Naidu. Newspaper publication was made on

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7.7.1986 and the locality publication was made on 21.3.1986. Section 9(1) Notice issued on 26.8.1986 and Section 9(3) Notice issued on 26.8.1986 are said to be served on 1.9.1986. In all these proceedings, it appears that the authorities have proceeded on the basis that the owners of the land are A.T.Rangaswamy Naidu, A.Savithiri and Magudapatti, as per records.

3. The case of the petitioner is that when they purchased the property in the year 1981 and thereafter as stated above, the said A.T.Rangaswamy Naidu was not alive. He had died long before and the sale deeds were executed by his son A.R.Narayanaswamy Naidu. The authorities have not served the notice on the present owners of the lands in question nor on the son of the late A.T.Rangaswamy Naidu. The writ petition was challenged inter alia on the ground that the proceedings culminating in passing Section 6 Declaration has to be set aside, in view of the infirmity in the non-observance of the statutory provisions and procedures.

4. No counter has been filed by the appellants even after 9 years when the matter was heard and decided by the learned single Judge in August, 1998. The Court, however, was constrained to look into the records and the learned single Judge came to the conclusion after perusal of the records and held as follows in paragraphs 3 and 4:-

> "3. On a notice, the learned Additional Government Pleader, was able to produce the connected records before this Court. I have gone through the connected records. The endorsement, made by the concerned officer at Page No.756 of the records, shows that the land owners and the interested persons appeared for the enquiry under Section 5-A and have raised their objections. But, it is not specified as to who are the land owners and who are the interested persons. At page No.760 of the records, it was observed that the notified person Thiru A.T.Rangaswamy Naidu did not appear for 5-A enquiry or no evidence has been let in to show his ownership. Thus, the Officer at one stretch has observed that the land owners and the interested persons appeared for the enquiry under Section 5-A and raised objections and in the other stretch he opined that the notified person Thiru A.T.Rangaswamy Naidu did not appear for enquiry under Section 5-A or no evidence has been let in to show his ownership. The fact remained is that Thiru A.T.Rangaswamy Naidu died even before 1981 and

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the endorsement made by the concerned Officer shows that Thiru A.T.Rangaswamy Naidu has been served with a notice. Thus, from the above, it could be called out that the endorsement made by the concerned Officer at page Nos.756 and 760 are contrary to each other. It is very surprising to note that the authorities have issued a notice to a dead person and therefore it should be deemed that no notice has been served on the proper persons or interested persons.

4. In view of the above, the enquiry conducted under Section 5-A and the declaration passed under Section 6 of the Land Acquisition Act, in so far as the lands in S.F.No.3-1C of Krishnarayapuram village, Coimbatore Taluk, Coimbatore District are quashed, only on the ground that the notice has been issued in the name of the dead person, and this Writ Petition is allowed. No costs."

5. The appellants herein, the respondents in the writ petition aggrieved by the above order of the learned single Judge filed the present writ appeal. The main contentions raised in the writ appeal, which will be relevant for the present case, are ground Nos.1 and 2, which read as follows:-

"1. The Learned Judge erred in law in quashing the land acquisition proceedings on the ground that notice under Section 5A enquiry was served on a dead person totally overlooking the fact that the notice was served on the person whose name was borne on the revenue records and if the subsequent owners had not taken steps to incorporate their names in the revenue records, acquisition proceedings cannot be said to be vitiated.

2. The Learned Judge ought to have seen that service of notice of land acquisition proceedings to persons whose names are borne on the revenue records is deemed to be a sufficient service in law and hence, the acquisition proceedings ought not to have been set aside or declared as null and void."

The above stated grounds only expose the fallacy on the part of the authorities and the irresponsible manner in which the acquisition

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proceedings are taken. It is clear from the above stated ground that the appellants have taken the stand that the service was made on the person whose name was borne on the revenue records (i.e.) A.T.Rangaswamy Naidu and others.

6. It is the specific case of the respondents that A.T.Rangaswamy Naidu was died even before 1981. That being the case, it is not clear how the authorities could have made an endorsement and recorded that they have in fact served notice on A.T.Rangaswamy Naidu, who was not alive. It is, therefore, obvious that the records have been created to suit the requirements, to show that notice was served on the owner on record. The learned single Judge after perusal of the records observed that in page No.756 of the records, the land owner and interested person appeared for enquiry under Section 5-A of the Act and raised their objections. At page No.760, it was noted that A.T.Rangaswamy Naidu did not appear for 5-A enquiry and no evidence was let in to show his ownership. This itself clearly establishes the fact that the authorities at one time recorded that the owners had appeared and at another time there was no appearance. In this context, the learned single Judge observed that the stand of the appellants that they have served the notice on the owners cannot be accepted as they could not have served on a dead person. The grounds in appeal also reiterate that they have served the notice on the person on record which is A.T.Rangaswamy Naidu whose death prior to 1981 as claimed in the writ petition has not been disputed or refuted. It is not surprising to note that the callousness in the acquisition proceedings as mentioned above is not a solitary instance vide (2006)3 M.L.J. 389 (Savithiriammal - v. - State of Tamil Nadu) wherein the acquisition proceedings for the purpose of Ganapathi Neighbourhood Scheme, Phase II, the adjacent area, was set aside by this Court on the ground that notice was issued in the name of dead person.

7. The learned Additional Government Pleader placed reliance on the decision of 2006(4) CTC 757 (Gopalakrishnan, G.S. - v. - Government of Tamil Nadu) and would submit that unless the authorities have been informed about the factum of death, there is no reason for them to make an enquiry and find out who is the actual or real owner. In the above case, the petitioners are owners of the property, who have purchased the land from a person on whose name Notification was issued and who was not alive at the time when the Notification was issued. Paragraph 17 of the judgment summarizes the issue as follows:-

> "17. Therefore in our considered opinion, the normal principle that proceedings against a dead person are a nullity, cannot be imported to proceedings under the Land Acquisition Act, 1894, unless it is established that the factum of death

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was brought to the notice of the acquiring authorities at the appropriate stage. Hence, the order of the learned Judge does not call for any interference and the Writ Appeal is dismissed without any order as to costs. Consequently, connected W.A.M.P. is also dismissed."

However, in paragraph 7 of the said judgment, it was noticed by the Division Bench and confirmed the view of the single Judge that Notification under Section 4(1) was issued in the name of a dead person in so far as the claim of writ petitioner Nos.1 and 5 is concerned. The failure on the part of the authorities to provide an opportunity to the writ petitioner Nos.1 and 5 to participate in the enquiry under Section 5-A was found to be in violation of the provisions and therefore, the acquisition proceedings as against the writ petitioners 1 and 5 were not accepted and the proceedings were set aside. It is only in respect of other writ petitioners, who had purchased the property after award enquiry the relief was rejected. Such a situation does not arise in the present case.

8. Admittedly, the owner of the land A.T.Rangaswamy Naidu died long before 1981. Prevaricating and inconsistent stand taken by the appellants that the notice was served on the owner, who died before 1981 and that he appeared as per page No.756 of the records and at page No.760 of the records, it is recorded that the owner A.T.Rangaswamy Naidu did not appear for 5-A enquiry or no evidence has been let to show his ownership. This clearly falsify the case of the service on the owner as per records. It is a case of record of service on a dead person for the purpose of acquisition.

9. Learned counsel for the respondents brought to the attention of the Court the orders passed in W.P.No.12715 of 1984 etc., batch dated 23.10.1991, Writ Appeal Nos.1427 to 1429 of 1994 etc., batch dated 2.4.2001 and W.A.Nos.1156 and 1157 of 1994 dated 30.4.2001 in respect of the very same acquisition proceedings, which were allowed. In these cases, the Section 4(1) Notification under G.O.Ms.No.551 Housing and Urban Development dated 7.3.1983 was quashed.

10. The Government, considering the attitude of the authorities in abusing one or other procedural aspects in acquisition proceedings, issued the G.O.Ms.No.12, Revenue dated 3.3.1985, which reads as follows:-

"The Special Commissioner and Commissioner of land Reforms has made the following general remarks in his Biennial Inspection of one of the Collectorates in the State:-

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"Another grave fault, which I have noticed in land acquisition proceedings is that there is a tendency to by-pass one of the most important requirements, namely, service of the notices, etc. I found that in some cases, in their hurry, without ascertaining ownership of the land, there has been a tendency for service by affixtures, which normally, should be a last resort. This is highly reprehensible. It does not give the land-owner a chance to make a representation. The District Revenue Officers and the Collectors should look into this and see these are avoided in future."

2. In this connection, the attention of the Collectors/District Revenue Officers is invited to the following instructions in Chapter-II - Powers and Duties of the Collector under the Land Acquisition Act, in Part-III of the Land Acquisition Manual:-

"It is a well established principle of law that all statutory provisions must be strictly complied with, and the burden of proof of compliance rests upon those who claim statutory powers or base their title upon the exercise of statutory provisions. The attitude of Civil Courts invariably is that acts of this character are to be liberally expounded in favour of the public and strictly expounded as against the State Government. It is necessary that Land Acquisition Officers should bear these facts in mind at every stage of their proceedings. Thus, for example, if general notices are not published or individual notices served as and when prescribed by the law, or any minimum interval required between two operations is not observed, all subsequent proceedings are thereby rendered invalid. A record of the publication or service of all notices must, therefore, be kept, since the

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burden of providing the same will be upon State Government in the event of the legality of the proceedings being subsequently contested."

3. The above instructions have become all the more important now that the period from 4(1) notification and declaration has been cut down from three years to one year under the Land Acquisition (Amendment) Act, 1984 (Central Act 68 of 1984) and any procedural infringement at any stage of the land acquisition proceedings should not be tolerated.

4. All the Collectors/District Revenue Officers are requested to look into this personally and see such lapses shall not recur in future and they are also requested to give instructions to all the Land Acquisition Officers to give in to the tendency to by-pass one of the most important requirement of the land acquisition proceedings, namely, the service of the notices, by affixture but to curtail this tendency and to adhere to the laid down procedures to the letter at all stages of land acquisition proceedings."

The reason for issuing the above G.O. is to warn the officers to be cautious and sincere in their approach in acquisition proceedings. Number of cases referred to earlier only shows that the acquisition proceedings are not done in a proper manner, but in an arbitrary and capricious way.

11. We are, therefore, inclined to accept the view of the learned single Judge that the authorities have not proceeded in the acquisition proceedings in the manner prescribed and the records are conflicting with each other. We find no merits in the appeal. Accordingly, the appeal is dismissed. There will be no order as to costs.

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Sub Asst.Registrar

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To

1.The Deputy Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Madras-9.

2.The Special Tahsildar,
Land Acquisition,
Housing Scheme No.I,
Coimbatore-18.

+1cc to the Government Pleader Sr 13616
+1cc to Mr.V.Nicholas, Advocate Sr 13558

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